

VIA CM/ECF

January 12, 2022

Honorable Denise L. Cote
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY, 10017-1312

On June 3, 2021, trial was scheduled to occur on 2/7/22. The parties were informed on 12/2/21, that trial will begin on 2/23/22 in a courtroom reconfigured for the pandemic. Jury selection will occur on 2/23 unless the defendant has resolved his case before that time.

Dear Judge Cote:

Please accept this letter as Elliot Smerling's motion to schedule change of plea hearing for the week of February 21, 2022. The Court, in a memo endorsement signed on December 3, 2021, stated that "any plea on this case should be scheduled to occur no later than February 4, 2022, and trial shall begin on February 23, 2022." We are respectfully requesting to schedule Mr. Smerling's change of plea hearing for the week of February 21st for the reasons below.

Mr. Smerling will be pleading guilty on this case. Defense counsel and the Government have discussed, but not yet finalized, the terms of Mr. Smerling's plea agreement. This process has been delayed because in-person jail visits have been suspended since at least January 6th, and defense counsel has been unable to meet with Mr. Smerling in private. As of today, in-person jail visits are still on hold.

Moreover, Guy Lewis, Mr. Smerling's lead defense counsel, today began jury selection in a multi-defendant securities fraud case in the Northern District of Texas. Attorney Lewis expects that this trial will last at least two weeks, which renders him unable to advance plea discussions or personally attend hearings on Mr. Smerling's behalf.

Lastly, co-counsel David Kubiliun and Adriana Collado-Hudak have a special-set trial in Lake County Circuit Court in Florida that is scheduled to begin on January 24th. This trial was scheduled in August of 2021 to accommodate out-of-state parties and witnesses.

Under the collective circumstances, it is defense counsel's position that proceeding to a change of plea hearing without personally meeting with Mr. Smerling to discuss and finalize the terms of a plea agreement or a decision to plead open to the Court, would render their counsel ineffective.

For these reasons, we respectfully ask the Court to schedule Mr. Smerling's change of plea hearing for the week of February 21st. Defense counsel conferred with Assistant United States Attorney Jilan Kamal who has advised that the Government takes no position on this motion.

Respectfully submitted,

/s/ David Kubiliun

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